Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM JANUARY 1, 1967

THROUGH MARCH 31, 1967

VOLUME 126

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1967 through March 31, 1967, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION

Attorney General

MacDONALD GALLION
Attorney General

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Executive Assistant

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Chief Assistant Attorney General

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Mrs. Mary Lee Stapp
Mrs. Carol F. Miller

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Willard W. Livingston
John B. Crawley
Herbert Burson
William H. Burton, Jr.
B. Frank Loeb
James R. Payne

OPINIONS

February 8, 1967

Honorable E. S. Tunstall
Tax Assessor
Baldwin County Courthouse
Bay Minette, Alabama

Ad Valorem Taxes—Real Property—Assessment.

Building in existence on October 1, the law day, liable for ad valorem taxes for year involved, although said building subsequently destroyed by fire.

Opinion by Assistant Attorney General Payne.

Dear Sir:

Your request for an official opinion, bearing date of January 19, 1967, is as follows:

"Will you please give me an opinion on the following:

"Here in Baldwin County, in Bay Minette, we had a Business building to burn on December 2, 1966. The owner had previously signed his assessment on November 20, 1966, and of course the building was there at that time. He came in right after the first of the year and asked that we take the building off his assessment for 1967.

"I would like to know if I can take this building off of his 1967 assessment, which would eliminate any taxes on this building for 1967, or would he be liable for the 1967 taxes on this building, since it was there on October 1, 1966."

That the tax or law day relative to the assessment of ad valorem taxes is October 1 of any given year, is so firmly established by the Courts of Alabama, the question is no longer subject to serious controversy. Quarterly Report of Attorney General, Vol. 115, p. 88. As of that date, the ad valorem lien attaches to all property **in existence,** unless otherwise specifically exempted. Quarterly Report of Attorney General, Vol. 50, p. 86.

In Quarterly Report of Attorney General, Vol. 50, supra, the taxpayer purchased a lot in July, 1947; on October 8, 1947, he began the construction of a house and on December 15, 1947, he assessed his property stating that the house was practically completed. The tax assessor requested an opinion of this office as to whether he should assess the house "per the value of December 15." This office ruled in substance that the lot should have been assessed "as unimproved real property." The basis of this holding was that the house was not in existence on October 1, the law day, and hence, the lien did not attach to the house constructed subsequent to that date.

In your case the same legal concept applies as that just mentioned above—only the facts are different. In your case the "business building"

was in existence on October 1, 1966, and consequently, the ad valorem tax lien attached as of that date and the owner of the building in question is liable for the tax as assessed. See CJS, Vol. 84, Section 66, p. 171.

Your question, therefore, as to whether or not you can remove the building from the 1967 assessment is answered in the negative, and the owner of the building is liable for the 1967 taxes.

In passing, let me note that Title 51, Section 57(1), Code of Alabama 1940, is not applicable to the factual situation here presented.

Very truly yours,

MacDONALD GALLION
Attorney General

February 9, 1967

Hon. W. R. Chapman
President
Board of Commissioners
City of Troy
Troy, Alabama

Municipalities—Elections—Notice.

Act No. 663 and Act No. 664, 1961 Regular Session of the Legislature.

All municipal elections in municipalities which come within the purview of said acts must be held under the the provisions thereof.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of January 30, 1967, is as follows:

> "The City of Troy is under the commission form of government. On January 27, 1967, a petition was filed with the Judge of Probate of Pike County asking that the proposition of abandoning the commission form of government be submitted to the qualified voters of the city. Although the Judge of Probate has not yet so certified, it is expected that the petition is signed by the requisite number of qualified voters and that the Judge of Probate will so certify within the next few days.
>
> "Section 122 of Title 37 of the Code provides that the President of the Board of Commissioners shall, upon receipt of the certificate from the Probate Judge, by proclamation submit the

question of abandoning the commission form of government, 'at a special election to be held at a time specified therein, within forty days after the receipt of said certificate from said Probate Judge.'

"However, Section 3 of Acts 1961, p. 868, provides that special elections shall be held on any second or fourth Tuesday between the fifteenth day of April and the second day of the following February; and Section 4 of said act provides for two months' notice by publication.

"Assuming that the petition which has been filed contains the requisite number of names and that the Probate Judge so certifies within ten days' of its receipt, your opinion is requested as to when the special election may be held and what notice is required."

The Supreme Court in the case of **Bouldin v. City of Homewood,** 174 So. 2d 306, considered a question very similar to the one presented by you. In that case, the City of Birmingham and the City of Homewood entered into an annexation agreement under the provisions of Section 188 of Title 37, Code of Alabama 1940. This section, after providing for the calling of an election for such purpose, stated that the election shall be held not less than 30 days after the passage of an ordinance calling the election.

In the **Bouldin** case, the Supreme Court observed that no notice of the holding of an election under the provisions of Section 188, supra, was provided. It called attention to the fact that Section 34(22) of Title 37, Code of Alabama 1940, Pocket Parts, provides that it shall be the duty of the mayor to give notice of all elections by publication as therein provided. The Court also observed that notice of holding special elections, as well as regular elections, must be given under the provisions of Section 34(22). In that case, the Court also pointed out that Act No. 664 was a companion act of Act No. 663 and both of the acts, insofar as notice of election is concerned, were the same. In this regard the Court said:

"It is crystal clear that the legislature in 1961 by Acts No. 663 and 664, supra, intended to spell out in detail the requirements as to the notice to be given for municipal elections. No longer were city officials to be in doubt in these matters."

Your attention is directed to the fact that no notice is provided for holding of elections for the purpose of abandonment of commission form of municipal government under the provisions of Article 3 of Chapter 4, Title 37, Code of Alabama 1940. This article contains Section 122, the code section referred to in your request.

In line with the holding in the **Bouldin** case, you are advised that the proposed election for the purpose of abandoning the commission form of government in the City of Troy must be held under the provisions of

Act No. 664 of the 1961 Session of the Legislature, and in particular the provisions of Section 3 thereof must be followed. This section provides for the notice and the date upon which the election may be held.

In conclusion, the **Bouldin** case, supra, holds, in short, that all elections held in municipalities, coming within the purview of Act No. 663 or 664 of the 1961 Acts, having either a mayor-council form of government or a commission form of government must be held as provided therein.

In some instances, I have used the citations of these two acts as contained in the pocket parts of the 1958 Code as Recompiled.

Yours very truly,
MacDONALD GALLION
Attorney General

February 16, 1967

Honorable Louis Lackey
District Attorney
Sixth Judicial Circuit
Tuscaloosa, Alabama

District Attorneys—Salaries.

Act No. 620, Acts of Alabama, Regular Session 1965, Volume 2, page 1134, which provides for additional salary payable from the county treasury to district attorneys in circuits having one county and not less than four nor more than nine judicial judges applies to Tuscaloosa County and the District Attorney of that Circuit.

Opinion by Assistant Attorney General Turner.

Dear Mr. Lackey:

Your request for an official opinion, dated January 23, 1967, is as follows:

"RE: Application of Act No. 620, Regular Session of Legislature, 1965.

"The above noted Act No. 620 was passed by the Alabama Legislature in its Regular Session of 1965 and was approved by Governor George C. Wallace on August 26, 1965.

"Said Act No. 620 was entitled, 'An Act to provide further for the compensation of the Circuit Solicitor in Circuits composed of one County and having not less than four nor more than nine Circuit Judges,' and it provides as follows:

" 'Section 1. Beginning with the next term of office of the Circuit Solicitor in Circuits composed of only one County and having not less than four nor more than nine Circuit Judges, there shall be paid to the Circuit Solicitor of such Circuit, from the general fund of the County Treasury, in equal monthly installments, an annual supplement to his salary payable by the State, in the amount of Five Thousand five hundred fifty dollars.'

"As you know, Sir, our Circuit has long been composed of just one County, Tuscaloosa.

"Less than a month after said Act No. 620 was passed and approved, this same Legislature met in its Second Special Session of 1965 and passed Act No. 30, which Governor Wallace approved on September 23, 1965.

"In essence, Act No. 30 provided for a Fourth Circuit Judge for this Circuit. In November, 1966, pursuant to this Act No. 30, and after being duly elected in the General Election of 1966, Honorable Henry H. Mize was duly sworn into the Office of Circuit Judge, Place No. 4 of this Circuit. And, so, when I commenced my new term as District Attorney of this Circuit on January 16, 1967, my Circuit is one composed of only one county, and we have in our Circuit not less than four and not more than nine Circuit Judges. It would appear that our Circuit has grown into the embrace of said Act No. 620.

"The Circuit composed of Madison County also gained a fourth Circuit Judge at about the same time as Tuscaloosa County and seems also to have come under Act 620.

"It seems that there are now three Circuits meeting the specifications of the said Act No. 620, i.e., Mobile, Madison, and Tuscaloosa. I am informed that the District Attorneys of both Mobile and Madison Circuits are presently receiving the compensation of Office as provided by said Act. It is my feeling that the same applies to this Circuit. I would appreciate very much receiving your opinion on this matter."

Your reference is to Act No. 620, Acts of Alabama, Regular Session 1965, Volume 2, page 1134, which provides for additional salary payable from the county treasury to district attorneys in circuits having one county and not less than four nor more than nine judicial circuit judges.

Tuscaloosa, a one county circuit, now has four circuit judges and the above-cited Act applies to Tuscaloosa County and to the district attorney of that County.

The Supreme Court of Alabama has held that when the language and intent of a legislative act is clear there is no need for construction of the Act. **Newberry v. City of Andalusia,** 257 Ala. 49, 57 So. 2d 629.

The instant statute is unambiguous and plainly reveals the intent of the legislature. It provides that "Beginning with the next term of

office," certain circuit solicitors (now district attorneys) which meet specific requirements shall receive a supplement to their salaries.

Title 41, Section 17, Code of Alabama 1940, as Recompiled 1958, provides:

> "§ 17. TERMS OF OFFICE OF CIRCUIT SOLICITORS.—Circuit solicitors shall hold office for the term of four years from the first Monday after the second Tuesday in January next after their election, and until their successors are elected and qualified."

Therefore, on January 16, 1967, this being the next term of office, you met the requirements of the statute and are entitled to the supplement to your salary as provided in the statute.

Very truly yours,
MacDONALD GALLION
Attorney General

February 21, 1967

Honorable Nelson Allen
Judge of Probate
Walker County Courthouse
Jasper, Alabama

Filing Tax—Costs and Fees—Judges of Probate—Uniform Commercial Code

1. Security Agreements may be filed in lieu of Financing Statements provided the same conform to the provisions of Section 9-402 of the Uniform Commercial Code.

2. If a Financing Statement is filed with the Judge of Probate for "notice filing" under provisions of the Uniform Commercial Code, a filing fee of $2.00 is to be charged, together with mortgage tax specified under provisions of Title 51, Section 619, Code of Alabama 1940. Recompiled 1958, as amended.

3. Security Agreements when filed with the Judge of Probate in lieu of Financing Statements carry a filing fee of $2.00 and both mortgage tax and deed tax as applicable in Section 619, supra, and Title 51, Section 618, Code of Alabama 1940, Recompiled 1958, as amended.

4. Uniform Commercial Code permits filing without debtor's signature when secured party indicates on the Financing Statement that the same is made in order to perfect a security interest in proceeds of original collat-

eral, in which a security interest was perfected, and that such collateral has subsequently been disposed of by the debtor. See Section 9-402(2) (b) and Section 9-306, Uniform Commercial Code.

5. In such instances, as above named, where the proceeds are substituted for original collateral and a security interest is perfected by a notice filing, mortgage tax is not due if such tax has been paid previously on the original indebtedness. Title 51, Section 619(d), Code of Alabama 1940, Recompiled 1958, as amended.

Opinion by Assistant Attorneys General Hart, Loeb, and Webb.

Dear Judge Allen:

I have your letter of January 28, 1967, which reads as follows:

"Thank you very much for your assistance over the telephone on yesterday regarding the Uniform Commercial Code.

"The question which I ask you and which you stated you would call me about was, I believe, where a financing statement is signed by the seller only, and to it is attached an installment sales contract signed by the buyer only, is the recording fee (exclusive of tax) $4.00 or $2.00? I felt that you might understand my question better if you had a copy of the instruments before you, and am therefore enclosing same.

"I also enclose copy of a Financing statement signed by the assignee only, to which is attached an installment contract signed by both the buyer and the seller (or debtor and secured party). Would the recording fee (exclusive of tax) be $2.00 on **each** or a total of $2.00 for both instruments?

"Please return the enclosed copies with your reply, or with notations after you have phoned."

You have enclosed four forms, one of which purports to be a Uniform Commercial Code Financing Statement Form 1, listing one Carl Goodwin as debtor, Carl Cannon Chevrolet-Olds as secured party, and Associates Discount Corporation as assignee. This Financing Statement contains the signature of one Carl W. Cannon as secured party. It does not contain the signature of the debtor nor does the statement explain, in the paragraph immediately following Paragraph 6 thereof, why it is filed without the debtor's signature. I am of the opinion that this form standing by itself is legally insufficient for filing in the Office of the Judge of Probate, Section 9-402, Uniform Commercial Code.

The second instrument is entitled Alabama Installment Sales Contract between one Carl Goodwin as buyer and Carl Cannon Chevrolet-Olds as seller. The instrument contains the signature of one Carl

Goodwin as buyer (debtor). It does not contain the signature of the seller (secured party); and though the instrument is sufficient as a security agreement under the law, the same is not sufficient for purposes of notice filing under Section 9-402, supra. However, I note that the transaction, referred to in both instruments, has the same security, is for the same amount of money, and is between the same parties. I am, therefore, of the opinion that if you are satisfied that these two instruments referred to the same transaction, and if they were filed by the same party, they may be treated by you as being part of the same transaction and therefore together accepted as a complete instrument in the nature of a security agreement and accepted for filing as such under provisions of Section 9-402, supra. In this event, the two instruments should be filed together as a single instrument with one filing fee of $2.00 and with both mortgage and deed tax to be collected under provisions of Sections 618 and 619, Title 51, Code of Alabama 1940, Recompiled 1958, as amended.

The third instrument is one entitled Alabama Automobile Retail Installment Contract between one Joe Hardin as buyer and Dora Motor Company as seller. It also contains a stamped notation "Financing Statement Secured Party: Ford Motor Credit Company." It contains the signatures of the buyer (debtor), the seller, and the secured party of record by its Branch Manager. I am of the opinion that this particular instrument standing alone is legally acceptable as a security agreement for filing purposes under provisions of Section 9-402, supra, and that the filing fee thereon would be $2.00 together with both mortgage and deed taxes under provisions of Sections 618 and 619, Title 51, supra.

The fourth instrument is a Uniform Commercial Code Financing Statement Form 2 listing one Joe Hardin as debtor, Dora Motor Company as secured party, and Ford Motor Credit Company as assignee. It contains the signature of one F. Ray for the Ford Motor Credit Company as secured party. The statement also contains a notice in the paragraph immediately following Paragraph numbered 6 that the statement is filed without the debtor's signature to perfect a security interest in collateral, which is the proceeds of the original collateral described above in which a security interest was perfected. I am of the opinion that this instrument is also legally sufficient on its face and should be accepted by you, the filing fee for which would be $2.00.

The purpose of the fourth instrument, described immediately above, according to the comments of the Uniform Commercial Code Committee that drafted the original Code, is to allow a secured party to refile to perfect an interest in the proceeds of collateral in which an original security interest was perfected. Such refiling is necessary under Sections 9-306 and 9-402(2) (b), supra, Uniform Commercial Code, when the original collateral has been disposed of and the secured party's ten days' automatic interest in the proceeds will expire. The reason for dispensing with the debtor's signature is that the necessity for refiling arises from actions of the debtor in disposing of the collateral which may have

been unauthororized or fradulent, and the secured party should not be penalized for failure to make a timely filing by reason of difficulty in procuring the signature of a reluctant or hostile debtor. In such instances, as presented by this particular statement, mortgage tax would not be due if the same has been paid on the original indebtedness represented by a Financing Statement or security agreement on the original collateral. Note Title 51, Section 619(d), Code of Alabama 1940, Recompiled 1958, as amended.

Very truly yours,
MacDONALD GALLION
Attorney General

February 23, 1967

Mrs. Evelyn Thornburg
Clerk
City of Cherokee
Cherokee, Alabama

Municipalities—Officers and Offices.

1. In municipalities of less than twelve thousand inhabitants a vacancy in the office of the mayor must be filled by the municipal council.

2. A member of a municipal council, who is a candidate to fill a vacancy existing in the office of mayor, may vote in the election to fill such vacancy.

Opinion by Assistant Attorney General Gish.

Dear Mrs. Thornburg:

Your request for an official opinion bearing date of February 7, 1967, is as follows:

"We have a situation here in Cherokee that we feel that we will need your ruling on.

"Our former Mayor, R. E. Pate has resigned his position as Mayor and some of the Council would like to appoint Mr. Luther Rich who is Chairman of the Board and has served as Acting Mayor for the past year to be Mayor for the rest of this term, however there is some controversy over whether Mr. Rich can vote for himself or not and whether he can vote for someone else. He has voted as a member of the Council on other matters during the past year.

"We would appreciate it very much if you would give us a ruling on this matter before February 20, 1967, as this is the night the Mayor will be appointed."

The governing body of the City of Cherokee consists of a Mayor and five Aldermen who make up the City Council. Title 37, Section 404, Code of Alabama 1940, as amended by Act No. 666, Acts of Alabama 1961, page 910.

Title 37, Section 428, Code of Alabama 1940, as amended by Act No. 666, supra, reads in part as follows:

> "In the cities of less than twelve thousand inhabitants, and in towns, in case of the absence or disability of the mayor, the functions of the office shall be exercised by the chairman pro tempore of the council, and during his absence or disability, by such person as the council may appoint from its membership, which appointment must be entered upon the minutes of the council. In the event of a vacancy from any cause, in the office of mayor, the council shall fill the vacancy either from its own membership or from without the membership of the council."

A member of a municipal council may vote upon any question considered by such body unless he is prohibited by statute from casting his vote. See **Hamrick v. Town of Albertville,** 219 Ala. 465, 122 So. 448.

There is no statute which prohibits a member of a municipal council from voting for the person of his choice to fill a vacancy in the office of mayor where such member is a candidate to fill such vacancy.

Therefore, I am of the opinion that Mr. Rich may vote on the question of filling the vacancy now existing in the Office of the Mayor of the City of Cherokee.

Very truly yours,
MacDONALD GALLION
Attorney General

February 27, 1967

Mrs. Mabel S. Amos
Secretary of State
Montgomery, Alabama

Words and Phrases—Secretary of State—Judges of Probate—Uniform Commercial Code

1. Carbon copies of security agreements, financing statements, or other instruments to be filed with the Secretary of State and/or Judges of Probate under Section 9-402 of the Uniform Commercial Code meet the minimum legal requirements and therefore are acceptable for filing.

2. Photostatic or Xerox copies, or any other reproduction, with reference to notice filing under the Uniform Commercial

Code, may be filed with the Secretary of State and/or Judges of Probate if properly authenticated by original entry on the reproduced copy, by initialing, or any other method, to indicate or manifest that each party has adopted the same as his official signature.

3. Number 1, herein referred to above, is acceptable for filing, without question, with the Secretary of State and/or Judges of Probate.

4. Number 2, herein referred to above, is acceptable for filing with the Secretary of State and/or the Judges of Probate if properly authenticated by original entry on the reproduced copy, by initialing, or any other method, to indicate or manifest that the party has adopted the same as his official signature.

Opinion by Assistant Attorney General Hart.

Dear Mrs. Amos:

I have your letter of February 14, 1967, which reads as follows:

"We have received several Uniform Commercial Code Form 1's (Financing Statements) not having the debtor's signature but having attached thereto a carbon copy of the Security Agreement with a carbon signature, or a Xerox or photostat copy of the Security Agreement with Xerox or photostat copy of the signature.

"I shall appreciate receiving an opinion from your office relative to the following questions:

"(1) Does a carbon copy signature comply with Section 9-402 of the Uniform Commercial Code?

"(2) Does a photo or Xerox copy signature comply with Section 9-402 of the Uniform Commercial Code?

"(3) May such instruments be filed in this office?"

In the above letter you list three questions which are answered and discussed below.

In answer to your question numbered (1), may I refer you to Section 1-201(39) entitled "General Definitions" of the Uniform Commercial Code, which states:

" 'Signed' included any symbol executed or adopted by a party with present intention to authenticate a writing."

I am of the opinion that a carbon copy of the signature of the signer meets the minimum legal requirements of said section in that the debtor signed his name to the original, knowing full well that the carbon copies would also reflect his signature and that he intended it to be the same.

In answer to your question numbered (2), referring to the above-quoted Section 1-201(39), a photostatic or reproduced copy of the signature, in the absence of any proof of authentication, falls short of the minimum legal requirements for filing purposes under Section 9-402 of the Uniform Commercial Code. However, if a reproduced copy of a signature is properly authenticated by original initialing said signature, or by any other method used by the signer to indicate or manifest a present intent to authenticate the same as his official signature, the photostatic or reproduced copy will then be acceptable.

I am further of the opinion that if the individual cannot write and signs or authenticates by mark, the said mark, however made, must be attested to by two witnesses, who must make an original entry of their signature on said statement or reproduced copy to indicate that they had witnessed the same as being the signature of the signer. I would strongly advise against accepting a reproduced copy of a signature of the debtor not properly authenticated, for the reason that there is a possibility that the signature is not genuine, and, if the debtor denies the same, it might give rise to a libel suit against the filing officer by filing and publishing the same.

In answer to your question numbered (3), instrument number 1 meets the minimum legal requirements under Section 9-402 of the Uniform Commercial Code and is acceptable by the filing officer for notice filing. Instrument number 2 may be accepted by the filing officer for notice filing under the Uniform Commercial Code if the said instrument is properly authenticated as hereinabove discussed.

Yours very truly,
MacDONALD GALLION
Attorney General

March 1, 1967

Mr. Richard W. Neal
Deputy Clerk
Office of the Clerk of the Supreme Court
State of Alabama
Judicial Building
Montgomery, Alabama

Supreme Court.

1. There is no specific statutory authority for payment of compensation and expenses to members of a Special Supreme Court panel appointed by the Governor pursuant to the authority vested in him by Title 13, Section 15, Code of Alabama 1940, as Recompiled 1958.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of January 26, 1967 is as follows:

> "On November 21, 1966, this office certified to the Honorable George C. Wallace, Governor of Alabama, that the Chief Justice and each of the Associate Justices were disqualified to hear and determine two cases pending in this Court and requested that a Court be appointed pursuant to Title 13, Section 15, Code of Alabama 1940.
>
> "On December 16, 1966, the Governor did appoint Hon. Francis H. Hare, Sr., Hon. T. B. Hill, Hon. John P. Kohn, Hon. Frank Tipler, and Hon. J. Ed Thornton to serve as members of this court. The members of the Court have met on several occasions and have expended their time and certain of their monies for travel expense. I can find no statutory authority specifically authorizing a per diem allowance for time expended or payment of necessary travel expenses. If legally possible, these gentlemen should be paid for their time and expenses. I respectfully request your opinion in the following matters:
>
> " 1. Could the members of the Special Court be paid a per diem allowance computed on the basis of the annual salary paid to the Justices of the Supreme Court and if so, could payment be made from the fund 'other salaries' appropriated to the Supreme Court Account No. 110-2?
>
> " 2. Could the members of the Special Court be paid their actual travel expenses and if authorized, could these expenses be paid from the fund 'other expenses' appropriated to the Supreme Court Account No. 110-8?"

As stated in your request for an opinion from me, the Code section, i.e., Title 13, Section 15, Code of Alabama 1940, as Recompiled 1958, authorizing the appointment by the Governor of a Special Court of five members does not provide for their compensation. Furthermore, I am unable to find any other statutory authority specifically providing for compensation of the members of the Special Court appointed by the Governor.

Upon inquiry, it is the consensus of the old-timers here in the State Capitol that such a court has only been appointed once before, and this was during the early 1930's at the height of the Great Depression, when such a court was empaneled by the then Governor to decide whether the salaries of the duly elected members of the State Supreme Court could be reduced during their term of office.

In an opinion from this office to the State Comptroller found in Biennial Report of the Attorney General, 1934-36, p. 473, it was decided that there was no specific statutory authority for paying the members

of the Special Court appointed by the Governor to sit as a Special Supreme Court.

I, therefore, conclude that there is no specific statutory authority for paying the compensation and expenses of the five members of the Special Supreme Court panel appointed by Governor Wallace.

Very truly yours,
MacDONALD GALLION
Attorney General

March 2, 1967

Honorable Winford B. Smith
Judge of Probate
DeKalb County
Fort Payne, Alabama 35967

Elections—Voters Lists—Judges of Probate

1. Under the provisions of Title 17, Section 55, Code of Alabama 1940, Recompiled 1958, 1965 Cumulative Pocket Part, as last amended, the Judge of Probate is required to furnish a list of qualified electors for each voting place to the election inspectors at each general, special, or primary election.

2. Since the compensation for preparing said voters list is paid directly to those preparing the same, and does not inure to the benefit of the Judge of Probate, the fact that a Judge of Probate has been removed from the fee system and put on a salary basis does not affect the operation of said section.

3. The preparation of said voters lists by photostatic or photographic reproduction, rather than by typing, when said lists are brought up to date for the elections involved, is authorized and payment allowed therefor.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of February 15, 1967, is as follows:

"On December 6, 1966, there was a special amendment election in the State of Alabama. Prior to that election, the Probate Judge of DeKalb County appointed a Clerk to prepare a list as prescribed for in Title 17, Section 55, Code of Alabama. Instead of typing or writing the list, the Clerk had the list photographed and these photographic copies were distributed as prescribed by

law. According to my information, this is substantially the method used for preparing these lists in this portion of the State during this election. The Clerk duly filed claim for remuneration as provided for the statute. This claim has been rejected.

"Does the fact that the Office of the Probate Judge has been removed from the fee system affect the operation of Title 17, Section 55, to the exclusion of paying a Clerk for preparing the list provided for in that section?

"Does the fact that the Clerk had the list photographed, rather than typed, have any bearing upon whether the Clerk should be paid or not?"

I am of the opinion that both of your inquiries should be answered in the negative.

Under the provisions of Title 17, Section 55, Code of Alabama 1940, Recompiled 1958, 1965 Cumulative Pocket Part, as last amended, the Judge of Probate is required to furnish a list of qualified electors for each voting place to the election inspectors at each election, general, special, or primary. He is authorized to employ assistants and clerical help to prepare such a list who are paid for their services by the County, not to exceed the rate prescribed in said section. The compensation is paid directly to those preparing the lists, and in no manner inures to the benefit of the Judge of Probate—Quarterly Report of Attorney General, Volume 75, page 34; Quarterly Report of Attorney General, Volume 74, page 84; Quarterly Report of Attorney General, Volume 66, page 88; Quarterly Report of Attorney General, Volume 48, page 106; Quarterly Report of Attorney General, Volume 8, page 198.

Since the compensation for preparing the voters lists under consideration is paid directly to those preparing said lists, and is not paid to or through the Judge of Probate, the fact that a Judge of Probate has been removed from the fee system and put on a salary basis has no effect on the operation of Title 17, Section 55, supra. This answers your first inquiry.

In regard to your second inquiry, your attention is invited to a letter of this office written to Honorable Nelson Allen, Judge of Probate, Walker County, under date of June 18, 1962, wherein it was held that under the provisions of Title 17, Section 55, supra, a party preparing a voters list by assembling a list of qualified voters as published in the newspapers was entitled to be paid for preparing said list under said section. In said letter it was observed:

"It is immaterial as to the manner in which the person employed prepared the list of qualified electors. Such person may have the list typewritten, printed or, as the instant case, use the list published in the newspaper, making it correspond to the beats and voting places."

Under this ruling it is my opinion that the preparation of the voters lists in the manner prescribed in your letter of inquiry, viz., by photostatic or photographic reproduction rather than by typing said lists are brought up to date for the elections involved, would be authorized. A party so preparing said lists would be entitled to the compensation provided for in Title 17, Section 55, the same as if said lists had been typed.

Yours very truly,
MacDONALD GALLION
Attorney General

March 3, 1967

Honorable Nelson Allen
Judge of Probate
Walker County Court House
Jasper, Alabama

Filing Tax—Judges of Probate—Uniform Commercial Code

1. When a financing statement containing the names and addresses of the debtor, secured party and assignee, and signed by the debtor and the secured party, is presented to the Judge of Probate, it meets the minimum requirements of "notice filing" under Section 9-402, Uniform Commercial Code, and should be accepted by such Judge of Probate upon payment of the filing fee of $2.00, plus any mortgage privilege tax which may be due.

2. Such financing statement is sufficient to give notice that the party whose name appears in paragraph numbered 5 of the financing statement (Alabama Form UCC-1) is the secured party of record.

3. Where such assignee is a national banking association, but the original secured party whose name appears in paragraph numbered 2 in a non-exempt, taxable entity, the Judge of Probate should collect mortgage privilege tax under Section 619, as amended, Title 51, Code of Alabama 1940, Recompiled 1958; and paragraph numbered 6 of Form UCC-1 should be completed by the person filing said financing statement showing the initial indebtedness secured thereby.

Opinion by Assistant Attorneys General Loeb and Webb.

Dear Judge Allen:

Your request for an official opinion from this office bearing date of January 31, 1967, is as follows:

"I enclose copy of a financing statement signed by Larry Boyd, as debtor to Eastside Motors, Inc., as secured party, assigned to the First National Bank. Will you please advise me the following:

"1. Should we require the First National Bank, since it brings the document to this office for recording, to fill in the space showing the amount secured by the financing statement?

"2. Will said amount be taxable?

"In other words, financing statements made to an institution required to pay mortgage tax, (Eastside Motors above) then transferred to an institution that is tax exempt—is tax due?

"In the event no tax is due, do we still require the amount to be filled in (secured amount)?

"Please return the enclosed copy with your reply."

The financing statement (Form UCC-1) which was attached to your request shows the debtor to be one Larry Boyd, Route 6, Box 3, Jasper, Alabama; the secured party to be Eastside Motors, Inc., Jasper, Alabama; the assignee to be the First National Bank, Jasper, Alabama; includes a description of the collateral (1958 Pontiac, 2 dr. H.T.); and contains the signature of Larry Boyd, debtor, and Eastside Motors, Inc., by Fred Hoagland, President (secured party). The box indicating that proceeds of collateral are also covered is checked.

The effect of this financing statement is to perfect a security interest in the described collateral and the proceeds thereof as between the debtor and the secured party, and in addition, to disclose of record the assignment of this security interest in the described collateral to the First National Bank of Jasper. Section 9-405(1), Uniform Commercial Code, provides this method of indicating an assignment and requires a $2.00 filing fee for filing such statement. The filing of this statement, then, not only perfects a security interest in the collateral as between the debtor and the original secured party, but also gives notice that the First National Bank has become the assignee of record of said security interest. The purpose of this permissive filing on the part of the assignee in giving notice of the assignment is to give notice to creditors or anyone interested in the transaction that any inquiries concerning such transaction be directed to him or it rather than to the original secured party. Section 9-405(3), UCC, makes it abundantly clear that upon the filing of a proper instrument showing an assignment (in this case a financing statement, UCC-1) notice is given that the assignee is the secured party of record and this is true regardless of how such assignment is perfected.

The essential elements of this transaction are the same now as they were before the Code was adopted. The assignee, First National Bank of Jasper, is placing on record a mortgage (security instrument) from the debtor, Larry Boyd, to the mortgagee, Eastside Motors, Inc., as secured party, and is also placing on record the assignment of this

interest to it as assignee. While the assignment itself is not taxable under Title 51, Section 619, as amended, Code of Alabama 1940, Recompiled 1958, the mortgage itself would have been taxable before the UCC was adopted and the situation has not changed since the Code has been adopted. When a federal instrumentality filed an assignment to itself (on which no tax was due) together with the original mortgage which had never been placed on record and upon which mortgage tax had never been paid, this office ruled that the tax was due since at the time of the mortgage there was no question of taxing an exempt instrumentality because the National Bank was not concerned in the transaction until such time as the mortgage was assigned to it and that when it obtained said mortgage it took it with full knowledge that the mortgage tax was due and would have to be paid if and when same was offered for record. Biennial Report of the Attorney General, 1934-36, p. 632.

The adoption of the Uniform Commercial Code does not in any way change the basic effect of these transactions. Mortgage privilege tax must be paid to secure the benefit of placing on record the financing statement perfecting a security interest between Larry Boyd and Eastside Motors, Inc. In order for you to determine the amount of such tax, paragraph numbered 6 of the UCC-1 must be completed by the person filing same showing the initial indebtedness secured thereby. No tax is due for filing notice of the assignment.

I trust that the above information is sufficient to answer the questions posed by your inquiry. If there is any way in which we can be of further help to you please advise.

Yours very truly,
MacDONALD GALLION
Attorney General

March 6, 1967

Honorable A. J. Coleman
City Attorney
City of Decatur
Decatur, Alabama 35601

Appropriations—Corporations—Counties—Municipalities.

1. Under the facts presented, partcipating counties and municipalities may make appointments to the Board of Directors of North Central Alabama Mental Health Board.

2. Appropriations by counties and municipalities to a mental health board created under the Alabama Non-Profit Corporation Act discussed.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion under date of January 10, 1967, is as follows:

"In behalf of the City of Decatur and all of its officers or employees handling municipal funds and charged with the duty of accounting therefor, I have been authorized to request an official opinion from you in the following matter:

"A group of interested citizens representative of the North Central Alabama area comprising Cullman, Lawrence, Limestone and Morgan Counties, have submitted to municipal and governing bodies within those four counties proposed Articles of Incorporation and Bylaws for what is termed 'North Central Alabama Mental Health Board,' which corporation is to be incorporated under the Alabama Non-Profit Corporation Act. The purposes are set forth as follows:

"To promote the health and general welfare of the people of Cullman, Lawrence, Limestone and Morgan by providing a comprehensive program of community based mental health facilities.

"To review and evaluate the community's mental health needs, services, and facilities.

"To provide services and facilities for the lower as well as for those of middle and upper socio-economic levels.

"To operate without discrimination on account of race, creed or color.

"To operate not as a proprietary business or for profit, although a system of fees may be established for those who are able to pay some or all of the cost of services.

"To provide mental health services which may include any or all of the following functions:

"(1) Inpatient services.

(2) Outpatient services.

(3) Partial hospitalization services, including day care.

(4) Emergency services twenty-four hours per day.

(5) Consultation and education services available to community agencies and professional personnel.

(6) Diagnostic services.

(7) Rehabilitation services, which may include vocational, educational and social programs.

(8) Precare and aftercare services, such as halfway houses and foster homes and services to groups considered high risks for mental disorder.

(9) Training of mental health staff in all discipline as well as mental Health orientation for related professions and volunteers.

(10) Research to evaluate the effectiveness of the program and to add to the knowledge available related to mental health.

(11) Participation in planning and community organization related to mental health.

(12) Other functions related to the purposes of the corporation.

"The proposed Articles of Incorporation, which in my judgment are in need of amendment to come more closely in line with the provisions of the Alabama Non-Profit Corporation Act, provide that in the event of dissolution of the corporation, assets and property remaining in the corporation after discharge of all debts and obligations shall vest in the Department of Mental Health of the State of Alabama. The Bylaws of the Corporation contemplate that the governing body, namely the Board of Directors, will be appointed by the four participating counties and major municipalities in those counties.

"I find no specific statutory authority for the City of Decatur, or for any other municipality within the four-county area, or for any of the county governing bodies to give approval to this Corporation and to appoint the members of the Board of Directors. A question has also arisen regarding the legality of appropriations from these municipalities and the county governments to such a corporation, and in this regard, I have inquired for further information and obtained the enclosed letter from Mr. Joe E. Coon, ACSW, Community Mental Health Consultant, Division of Community Services, Department of Mental Health, dated December 29, 1966, and a copy of this letter is enclosed for your review.

"While this request is made in behalf of the City of Decatur and is not authorized by any of the other governing bodies, I am sure that they would appreciate your answer being directed to their authority as well, and if you find equal application of prevailing law, please provide that your response would have equal application to the governing bodies of Cullman, Lawrence, Limestone and Morgan Counties, and to the Cities or Towns of Decatur, Cullman, Athens, Moulton and Hartselle. Your attention is specifically directed to the following:

"1. Is the City of Decatur, and are the other mentioned counties and municipalities authorized to adopt resolutions approving such corporation and making appointments to the Board of Directors of the Corporation from time to time?

"2. Would an appropriation to a corporation organized as contemplated above constitute a lawful appropriation and a legal expenditure of municipal funds by the City of Decatur, and by the other mentioned municipalities and county governing bodies?

"Your early response will be appreciated as this matter is of critical importance to mental health services in our area."

The Alabama Non-Profit Corporation Act, under which the North Cental Alabama Mental Health Board is to be incorporated, is Act No. 578, Acts of Alabama 1955, page 1254.

Section 18 of Act No. 578, supra, reads, in part, as follows:

"The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the by-laws. **Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws.** In the absence of a provision fixing the term of office, the term of office of a director shall be one year." (Emphasis supplied.)

You state that the by-laws of the proposed corporation contemplate that its Board of Directors will be appointed by the four (4) participating counties and the major municipalities within such counties.

I am of the opinion that the above-quoted portion of said Act No. 578 is sufficiently broad to authorize said counties and municipalities to make appointments to the Board of Directors of the proposed corporation in accordance with its by-laws. Of course, the first Board of Directors should be named in the articles of incorporation as prescribed by Act No. 578, supra.

Therefore, your first question is answered in the affirmative.

This office has heretofore held in an opinion to Honorable Ira H. Weissinger, Judge of Probate, Lee County, under date of March 3, 1960, (not reported) that Title 22, Section 190, Code of Alabama 1940, authorizes counties and municipalities to make appropriations to a mental health clinic incorporated under Act No. 578, supra. However, since the proposed corporation, to which your request refers, will serve the citizens of Cullman, Lawrence, Limestone, and Morgan Counties and the municipalities therein, I am of the opinion that each county and municipality must be assured that its funds will be used for the benefit of its citizens with priority to its indigent patients.

Therefore, your second question is answered in the affirmative provided that the proposed corporation agrees to expend each appropriation in the manner discussed hereinabove.

Yours very truly,
MacDONALD GALLION
Attorney General

March 15,1967

Colonel C. W. Russell, Director
Department of Public Safety
Montgomery, Alabama

Income Tax—Expenses—Highway Patrol.

Costs of maintenance and repair of uniforms required to be worn by members of the Highway Patrol, and not adaptable for use as ordinary clothing, are deductible in computing net income for State income tax purposes.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion of this office dated February 2, 1967, is as follows:

> "This department employs certain peace officer personnel known as State Troopers. These men are required to wear as a condition of employment, a distinctive uniform, including cap, shirt, trousers, shoes, insignia, and weapons, together with appropriate gear for inclement weather. Each of these officers is required as a condition of employment to keep all items of uniform clean and repaired. Each officer is forbidden the wearing of all or any part of the uniform except and when he is on actual duty, or traveling to or from his home to the place of duty.
>
> "Please inform this department so that adequate instructions may be given our peace officer personnel whether or not:
>
> "Under the requirements and restrictions upon wearing of the distinctive uniform the cost of maintenance and repair of such uniforms is a properly deductible item of non-trade or non-business expense in computing individual .Alabama income taxes?"

The only provision of state law relating to your question is found in Title 51, Section 385(a), Code of Alabama 1940, which provides, in part, as follows:

> "§385. Deductions (individuals). — In computing net income, there shall be allowed as deductions: (a) All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, ..."

A careful search reveals no opinions of this office, or Alabama case law dealing with an interpretation of the above statute with respect to the question raised in your request. However, the Federal Internal Revenue Code, Title 26, Section 162(a), U.S.C.A., contains the same provision as Section 385(a), supra, and the Federal courts have

interpreted said section as to what constitutes ordinary and necessary expenses paid or incurred in carrying on any trade or business within the meaning of the income tax statutes.

The question to be answered is whether or not the expenses mentioned in your request were ordinary and necessary expenses paid or incurred in carrying on any trade or business.

Income Tax Regulation 385.1 issued by the Department of Revenue provides, in part, as follows:

> "Section 385(a) contains provisions similar to those of the Federal Internal Revenue Code, and judicial and administrative decisions of the Federal agencies will be given consideration by the Department in administering this subsection."

In the case of **Caruso v. United States,** 236 F. Supp. 88, the Court stated:

> "Section 162 of 26 U.S.C. reads in pertinent part:
>
> "'(a) In general. — There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. —'
>
> "Denying the applicability of this section, the government has argued that plaintiff was not engaged in any trade or business at the time of the controverted expenditure. It has long been recognized, however, that the performance of services as an employee does constitute such a trade or business within the meaning of the income tax statutes. The employee is deemed to be in the 'business' of earning his pay. Noland v. C.I.R., 269 F. 2d 108, 111 (4th Cir. 1959). See also 2 C.C.H. 1964 Stand. Fed. Tax Rep. ¶1342. The clearest and most familiar examples of this deduction occur in the realm of travel and entertainment expenses. 26 C.F.R. §§ 1.162-1, 1.162-2, 1.162-17 (1961), as amended, 26 C.F.R. §§ 1.162-1, 1.162-17 (Supp. 1964). But the spirit and effect of section 162 have carried even further. Thus, by a recently re-enacted Revenue Ruling, agency fees paid to secure employment are permissible deductions by an employee. Rev. Rul. 223, 1960-1 Cum.Bull 57.[4] While there appears to be some question as to the bounds of this allowance, it seems well settled that such expenditures directly resulting in employment will so qualify. Thomas W. Ryan, 28 P-H Tax Ct.Rep. & Mem. Dec. ¶59,131 (1959)."

In referring to the term "trade or business" the Court in the case of **Trent v. Commissioner of Internal Revenue,** 291 F. 2d 669, had this to say:

> ". . . . the courts have properly assumed that the term includes all means of gaining a livelihood by work, even those which would scarcely be so characterized in common speech, Hill

v. C.I.R., 4 Cir., 1950, 181 F. 2d 906 [teacher]; Coburn v. C.I.R., 2 Cir., 1943, 138 F. 2d 763 [actor]; Walter I. Greer, 1957, 28 T. C. 994 [judge]; Matilda M. Brooks, 1958, 30 T.C. 1087 [research worker]; and other instances cited in 4 Mertens, Law of Federal Income Taxation (1960) ch. 25 p. 22, fn. 66-69."

The costs of cleaning and repairing uniforms worn by members of the California Highway Patrol were held to be ordinary and necessary expenses in the case of **Commissioner of Internal Revenue v. Benson,** 146 F. 2d 191, and were deductible in computing net income for Federal income tax purposes.

The Commissioner of Internal Revenue has ruled that in order for the cost and maintenance of uniforms to be deductible as business expenses, both of the following tests must be met: (1) The uniforms must be of a type specifically required as a condition of employment, and (2) they must not be adaptable to general or continued usage to the extent that they take the place of ordinary clothing. See C.C.H. Standard Federal Tax Reporter, 1966, Vol. 2, par. 1342.2646, page 21,116.

In your request you state that State Troopers are required as a condition of employment to wear a distinctive uniform, to keep all items of uniform clean and repaired and that each officer is forbidden to wear all or any part of the uniform except and when he is on actual duty. In view of these facts and the above mentioned Federal decisions and rulings, it is my opinion that the employment as a State Trooper is a "business" within the meaning of section 385(a), supra, and that the costs of maintenance and repair of such uniforms are deductible in computing net income as ordinary and necessary expenses paid or incurred during a taxable year in carrying on such business.

Very truly yours,
MacDONALD GALLION
Attorney General

March 16, 1967

Honorable Woodfin Patterson
President, Jefferson Davis College
Brewton, Alabama 36426

Colleges and Universities — Contracts.

1. Junior colleges established under the Alabama Trade School and Junior College Act of 1963 are subject to the state printing contract under the provisions of Title 55, Section 110, Code of Alabama, Recompiled 1958.

2. The time when a one year warranty begins with reference to the construction of state school buildings and their equipment is a matter of contract between the contracting parties but usually runs from the date the building is accepted in the name of the State; if more than one building under one contract, from the date the last building is accepted in the name of the State.

Opinion by Assistant Attorney General Webb.

Dear Sir:

I have your request for an official opinion bearing date of February 14, 1967, which reads as follows:

"Would you please give us an official ruling on the following:

"1. Can Jefferson Davis State Junior College use its funds to pay the Brewton Standard (local newspaper) for printing a general catalog and other bulletins and brochures necessary for the operation of the school? Provisions of the State Competitive Bid Law will be complied with.

"The school's funds come from the general appropriation for operation of State Junior Colleges and from student tuition.

"2. Under general contracts for state school buildings, buildings and equipment have a one year warranty by the general contractor. What is the beginning date for the warranty. When the building is occupied? When the State Building Commission states that the building is complete etc.? How can the beginning date of the warranty be identified and established legally?"

In my opinion, the Jefferson Davis Junior College could use its funds to pay the printing of a general catalog and other bulletins and brochures necessary for operation of the school. However, it does so subject to the provisions of the state printing contract, under the provisions of Title 55, Section 110, Code of Alabama, Recompiled 1958, which reads, in pertinent part as follows:

". . . and all **handbooks, pamphlets,** blanks, **bulletins, circulars, notices,** reports, messages, and forms **used, published, or required** by all such officials, boards, commissions, bureaus, departments, and institutions, . . ." (Emphasis supplied.)

The particular class would be Class Four, under Section 111 of Title 55, supra, which includes:

". . . all blanks, **circulars, notices,** and forms used in the office of or ordered by the governor, **or by any other** state official, board, commission, bureau or department, . . ." (Emphasis supplied.)

Institutions established under the Alabama Trade School and Junior College Act of 1963 (Act No. 94, Acts of Alabama 1963, page 268),

have been considered under the provisions of the state printing contract since their creation. Last year during the 1966 Special Session of the Legislature, a bill (H.B. 121) was introduced to amend Section 110 of Title 55, supra, so as to specifically exempt them. However, this bill passed the House and did not pass the Senate. In my opinion, junior colleges (trade schools and like institutions) under the State Board of Education are clearly state institutions within the provisions of this section. The state contract under Class Four for the current year, is with the Skinner Printing Company of Montgomery, Alabama. This negates the idea of your doing printing work through the **Brewton Standard,** a local newspaper. Your first question is, therefore answered in the negative.

In contracts for the construction of state school buildings, the time when a one year warranty begins to run is usually stated in the contracts. This is a matter of agreement between the contracting parties, and is not subject to any fixed rule of law as to date.

The usual rule of the Alabama Building Commission, and found in most contracts, is that the warranty begins to run from the date the building is accepted in the name of the State. If more than one building is embraced in the contract, the date of warranty runs from the date of acceptance for the State of the last building completed.

The beginning date of the warranty is identified by reading the contract and that date is established by the contracting parties before the contract is written, or the date of acceptance in the name of the State may be obtained from the State Building Commission.

The above general rule of the Alabama Building Commission is contained in some of their written matter and is rather well known in the contracting field.

Very truly yours,
MacDONALD GALLION
Attorney General

March 16, 1967

Honorable Harry M. Philpott
President, Auburn University
Auburn, Alabama

Honorable Frank A. Rose
President, University of Alabama
University, Alabama

Auburn University — University of Alabama — Funds (Federal)

Alabama Community and Technical Services Agency, a Corporation created by the Boards of Trustees of Auburn Univer-

sity and the University of Alabama and designated as a state agency by Executive Order Number 24, dated January 31, 1966, is a state agency which may be lawfully designated by the Governor of the State of Alabama pursuant to Title 55, Sections 180(1), 180(2), Code of Alabama (Recompiled 1958) to receive and administer federal funds and programs.

Opinion by Assistant Attorney General Madison

Gentlemen:

Your request for an official opinion dated February 20, 1967, but received here March 8, 1967, is as follows:

"Re: Alabama Community and Technical Services Agency — Status as State Agency

"The undersigned officers of the State of Alabama, entitled by law to the opinion of the Attorney General, and being officers required to collect, disburse, handle and account for public funds, request your opinion concerning the hereinbelow stated question. It is hereby certified that the advice sought is necessary to the performance of an official act which must be immediately performed by us as President of Auburn University and President of the University of Alabama, both instrumentalities of the State of Alabama, as shown by the facts set out herein.

"Your opinion is requested with respect to the following question:

"IS ALABAMA COMMUNITY AND TECHNICAL SERVICES AGENCY, A CORPORATION CREATED BY THE BOARDS OF TRUSTEES OF AUBURN UNIVERSITY AND THE UNIVERSITY OF ALABAMA AND DESIGNATED AS A STATE AGENCY BY EXECUTIVE ORDER NUMBER 24, DATED JANUARY 31, 1966, A STATE AGENCY WHICH MAY BE LAWFULLY DESIGNATED BY THE GOVERNOR OF THE STATE OF ALABAMA PURSUANT TO TITLE 55, SECTIONS 180(1), 180(2), CODE OF ALABAMA (RECOMP. 1958) TO RECEIVE AND ADMINISTER FEDERAL FUNDS AND PROGRAMS?

"In 1965, the Congress of the United States of America enacted the State Technical Services Act of 1965 (Public Law 89-182, approved September 14, 1965) establishing a program to promote commerce and encourage economic growth by supporting State and interstate participation to place the findings of science usefully in the hands of American enterprise, and the Higher Education Act of 1965 (Public Law 89-329, approved November 8, 1965), Title I of which provides for the planning and coordination of community service pro-

grams for development of both rural and urban communities in the various states. To receive funds made available through these enactments and to administer the programs established therein, Auburn University and the University of Alabama created the Alabama Community and Technical Agency, a nonprofit corporation located in Montgomery, Montgomery County, Alabama, its post office address being State Capitol, Montgomery, Alabama, and the name of its registered agent being Mrs. Agnes Baggett, Secretary of State, or her successor in office. Copies of the Articles of Incorporation and by-laws of the corporation are attached hereto. The president of each university acted as an incorporator. The Board of Trustees of each institution recognized, ratified and adopted the corporation by resolution, copies of which are attached.

"By Executive Order Number 24, dated January 31, 1966, the Governor of the State of Alabama, acting pursuant to Title 55, Section 180(2), Code of Alabama (Recomp. 1958), designated Alabama Community and Technical Services Agency as the agency to carry out in and for Alabama the functions specified by the State Technical Services Act of 1965 and by Title I of the Higher Education Act of 1965. A copy of this order is attached. Notice of the designation was given to the United States Commissioner of Education as to Title I of the Higher Education Act of 1965 and to the Secretary of Commerce as to the State Technical Services Act of 1965.

"The Secretary of Commerce accepted Executive Order Number 24 and changed the designated agency under the State Technical Services Act from Auburn University, which had previously administered the program, for the State of Alabama, to Alabama Community and Technical Services Agency. However, the Commissioner of Education requested that the designation under Title I of the Higher Education Act 'be supported by a legal opinion to the effect that under Alabama law the corporation is a State agency of the State of Alabama.' Pending securing this opinion, it was agreed between Auburn University and the University of Alabama that the latter should act as designated agency for the State.

"This interim arrangement whereby a joint agency is administering one of two interrelated programs while the other is being administered by one institution alone is contrary to the concept adopted by Auburn University and the University of Alabama. It is believed that joint administration of the total programs would best promote its efficient administration and the benefit to be derived therefrom by the citizens of the State of Alabama."

The University of Alabama and Auburn University are both state agencies and each is under the management and control of a Board of

Trustees. Section 264 and Amendment No. 161, Constitution of Alabama 1901; **Cox v. Board of Trustees of the University of Alabama,** 161 Ala. 639, 49 So. 814; **Denson v. Alabama Polytechnic Institute,** 220 Ala. 433, 126 So. 133.

The said Boards of Trustees have all the rights, powers and franchises necessary or promotive of the ends of their creation, and the management and control in said boards over their respective institutions is exclusive. Biennial Report of Attorney General, Volume 1918-20, page 474.

A corporation such as the Alabama Community and Technical Services Agency is merely an instrumentality through which the Trustees are exercising their exclusive management and control in the field here under consideration.

All officers and directors of the Alabama Community and Technical Services Agency, a Corporation, are also officers, agents, or employees of their respective institutions and the purposes of the said corporation are pertinent and germane to the educational interests of each institution.

The Alabama Community and Technical Services Agency is, therefore, not a corporation separate and apart from either of the Universities, but instead is, as stated above, an instrumentality through which the two Boards of Trustees exercise their power, control and direction over this particular phase of University activities.

In an opinion of this office reported in Quarterly Report of Attorney General, Volume 76, page 63, it was ruled in 1954 that Auburn Athletic Association, the Auburn Society for Public Improvement, Incorporated, and the Auburn Research Foundation all are agencies of Auburn University created by the governing body thereof to assist the Board of Trustees in the control and management of the University, then Alabama Polytechnic Institute; that being agencies of a state instrumentality, they were entitled to the privileges, benefits and exemptions applicable to the State of Alabama pertaining to the Federal and State tax laws.

It results from the reasoning of the above opinion and what has been said above that Alabama Community and Technical Services Agency, a Corporation, is under Alabama law a state agency of the State of Alabama, and therefore your question is answered in the affirmative.

Yours very truly,
MacDONALD GALLION
Attorney General

March 21, 1967

Honorable H. R. Leeman, Superintendent
Decatur City Schools
Decatur, Alabama

Schools — Teachers — Teachers Tenure Law.

1. One who teaches and also coaches football or basketball, or both, for the required time obtains continuing service status under the Teacher Tenure Law as a teacher and not separately as "coach."

2. A teacher, who also coaches, on continuing service status may be transferred to some other teaching position with salary in accordance with a general salary schedule for such teaching position adopted by the employing board of education in accordance with the provisions of Section 354 of Title 52, Code of Alabama, Recompiled 1958.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an opinion of this office under date of March 6, 1967, is as follows:

"It is understood that the Alabama Teachers' Tenure Law, as contained in Sections 351-361 of the Code of Alabama, provides for the attainment of continuing service status of teachers after three consecutive years of employment and re-employment for a fourth year.

"In the interpretation of this provision, we wish to ask for your opinion in answer to the following questions:

"1. May a teacher who performs additional duties as football or basketball coach attain tenure as a teacher or coach or both?

"2. May a teacher with supplementary coaching duties and salary who has attained tenure status have his supplementary coaching duties and salary removed by the Board of Education and be permitted to continue his employment as a teacher and be paid on a basis of the regular teachers' salary schedule in effect in the system?"

On July 10, 1956, this office answered a request for an opinion on the questions now submitted by you. It is deemed pertinent to incorporate that opinion in this answer to your request so that both may be published as formal opinions of this office. The said opinion of July 10, 1956, is as follows:

"Hon. P. W. Colburn
Superintendent
Fayette County Board of Education
Fayette, Alabama

"Dear Sir:

"I have your letter of June 29, 1956, which is as follows:

" 'The Fayette County Board of Education pays its personnel by an adopted schedule. Among other things it states:

" '1. That coaches be given the regular pay of a classroom teacher, as shown by the schedule, plus a supplement of $40.00 per month for nine (9) months.

" '2. That the Board of Education will match contributions of the local high school community, up to a stated amount, for use in carrying on a summer recreational program. The coach, who is chosen to be director of the program, in most cases, is paid whatever amount that is put into services for the program. If the community does not wish to contribute then they do not have a summer program.

" 'In the light of Title 52, Chapter 13, Sections 351-355, Alabama School Code of 1940, the Fayette County Board of Education desires your answers to the following questions:

" '1. Does a coach have tenure in that position? or,

" '2. Could he be transferred to some other teaching position, for which he is qualified? or,

" '3. Is his total income for the year to be termed as salary in the light of Title 52, Chapter 13, Section 354?

" '4. If transferred to another teaching position would his salary be that of a regular classroom teacher as determined by an adopted salary schedule?

" 'Please let us have your reply at your earliest convenience.'

"In addition to the facts set forth in your letter, you have advised me orally that the coach also teaches certain classes and has been coaching and teaching long enough to obtain continuing service status under the Alabama Teacher Tenure Law.

"It is my opinion that one who coaches, teaches classes and conducts a summer recreational program, is a teacher within the meaning of the tenure law as set forth in Title 52, Sections 351 through 361, Code of Alabama 1940, as amended. His rights and those of the employing board of education must be measured by that law.

"I have given consideration to the former opinions of this office reported in Quarterly Reports of Attorney General, Vol. 22, page 259, Vol. 52, page 96, Vol. 55, pages 43 and 101, insofar as they may be pertinent to the questions presented here, but I am of the opinion that the cases of **Clark et al. v. Beverly,** 257 Ala. 484, 59 So. 2d 810, and **Traweek v. Pittman, et al.,** 259 Ala. 24, 65 So. 2d 504, furnish the proper guides for the answers to your questions. Based upon these cases, your questions will be answered generally in the following manner:

"A coach who also teaches classes and conducts a summer recreational program for the required number of years has continuing service status as a teacher under the tenure law. He cannot be dismissed except for cause. Such person may, however, be transferred to some other teaching position with salary in accordance with a general salary schedule for such teaching position adopted by the employing board of education in accordance with the provisions of Section 354 of Title 52, Code of Alabama 1940, as amended by Act No. 773, General and Local Acts 1953, page 1040. He does not have to be paid the same salary received as coach and classroom teacher.

"The above renders it unnecessary to deal with the $40.00 per month supplement or the contributions of the local high school community."

In addition to the above, it is pointed out that Section 555, Title 52, Code of Alabama, Recompiled 1958, provides that every public school and private or parochial school shall carry out a system of physical education, the character of which shall conform to the program or course outlined by the department of education. **Mitchell v. McCall,** 273 Ala. 604, 143 So. 2d 629, holds Section 555 to be reasonable and the program of education under it legislative in nature. Football and basketball are a part of this educational program. Quarterly Report of Attorney General, Volume 19, page 48.

In **Re Ganaposki,** 119 A.L.R. 815, the Pennsylvania Supreme Court said: "There can be no doubt that a comprehensive definition of 'teaching' physical education embraces all fields of athletics, including coaching football and basketball." I know of no law which provides for the employment of a "coach" who has no teaching certificate. A "coach" without such certificate is not within the Teacher Tenure Law. Section 351, Title 52, Code of Alabama, Recompiled 1958; **Steele v. Matthews,** 253 Ala. 255 44 So. 2d 1; **Re Ganaposki,** supra.

So, one obtains continuing service status as a teacher and not specifically as coach of football or basketball. In reality the proper designation might well be as teacher of physical education.

It is my opinion that this general discussion answers all of your questions.

Yours very truly,
MacDONALD GALLION
Attorney General

March 22, 1967

Honorable Ernest Stone
State Superintendent of Education
Department of Education
State Office Building
Montgomery, Alabama

Schools — Funds — Officers and Offices.

In the absence of specific statutory authority, county and city boards of education may not employ and pay private policemen and investigators for the protection of public school buildings and other public school property against vandalism.

Opinion by Assistant Attorney General Madison.

Dear Dr. Stone:

Your request for an official opinion dated March 9, 1967, is as follows:

> "School boards over Alabama, as evidenced by the enclosed letter from Dr. Cranford H. Burns, Superintendent of Mobile Public Schools, are experiencing much trouble with vandalism. School buildings are not being properly protected by policemen and other law enforcement officers employed by County and City Governments in many school districts. Your opinion is sought on the following question:
>
> "Is it legal to use public school money to employ a policeman or private investigator for the protection of school buildings?"

It does seem that boards of education should have authority under their broad powers to employ at least a night watchman to combat vandalism in public schools, which in some areas is becoming quite a problem.

I note, however, that it took special statutory authority for Auburn University, University of Alabama, the State Docks Department, and even the State Capitol to employ and pay police officers, etc., for their protection.

Generally, it is the duty of already existing public bodies to perform the duties which would be performed by those employed by school boards as policemen and private investigators. I realize that these public bodies could not possibly give the time and individual attention which may be needed, but in the absence of specific statutory authority, my answer must be in the negative.

Yours very truly,
MacDONALD GALLION
Attorney General

March 23, 1967

Honorable W. P. Mangham
Chairman, Macon County Board of Registrars
c/o Mrs. Helen C. Parks
209 West Church Street
Tuskegee, Alabama

Boards of Registrars — Offices and Officers — Courts of County Commissioners — Macon County — Monroe County — Statutes.

1. A member of a Board of Registrars of a County may serve as a clerical assistant to the Board at such times as the Board is not performing its duties in the registration of voters, passing upon applications, signing required forms, and purging its lists.

2. There is no prohibition against a member of a Board of Registrars serving as a clerical assistant to such Board, provided that the work performed by such member does not interfere with his duties as a Registrar.

3. Courts of County Commissioners and like governing bodies of a County may arrange for the employment of a member or members of the Board of Registrars as clerical assistants when the work to be performed by such member or members does not conflict or interfere with the duties of such person or persons in his or their Board capacities.

Opinion by Assistant Attorney General Hall.

Dear Sir:

Your request for an official opinion of this office received on March 6, 1967, is as follows:

"The Macon County Board of Registrars wishes to employ for parttime clerical work to be paid for under Act No. 829, Regular Session, 1965, one of its own members and, at times, two of its members. The work to be done is not any of that required by state law to be performed by the board members themselves, such as passing upon applications, signing various forms, and other duties connected with the receipt of applications and purging work.

"The work which it is proposed that such members of the board perform as clerks, and not as board members, consists of setting up a typed card file of the registered voters, alphabetizing work, placing current addresses of voters on the files, preparing mail and similar work which could be under state law, and normally is in counties having files of registered voters, performed by clerks.

"We understand that when the board needs to meet extra days for deciding on names to be purged from the lists, holding hearings, or, in the event of re-registration, that days would be applied for the meet under Act 253 of the 1964 Special Session, and the board has followed this procedure where extra days were needed by it to perform its duties.

"The Macon board, since it does not have a fulltime clerk, desires to request approval from the county governing body for a set number of clerical days, from time to time, setting out in writing the work to be done and the persons, two board members and others, who may be used during part or each of the days approved by the county governing body for such clerical work. Obviously, board members could not do any such clerical work on a regular day of meeting of the board since they would then be performing as board members and be entitled to pay as set out by state law for such meeting days.

"If the above procedure is followed, if the work to be done is approved by the county governing body as properly clerical rather than board work in nature, and while there is no fulltime clerk furnished to the board, does the board of registrars have the authority to name one or two of their members for the clerical work and does the county governing body have the authority to pay such members at the rate set by that body?

"We would appreciate a ruling as soon as possible since a woman who has formerly served as the parttime clerk for the board is now a board member and has, on clerical pay in the past, started a card file of the registered voters of the county and the board would like to have this work completed."

I know of no law which would prohibit a member of the Board of Registrars from serving as a clerical assistant to the Board at such times as the Board is not performing its official duties in the registration of voters, passing upon applications, signing required forms, and purging its lists.

The law provides that members of the Board of Registrars shall not hold any **elective** office during the time for which they have been appointed as such members. This, in my opinion, would not prohibit a member of the Board of Registrars from serving as a clerical assistant, **provided** that the work performed by such member does not interfere with his duties as a Registrar.

Insofar as this opinion conflicts with the informal opinion rendered to Honorable J. C. Johnson, Chairman, Monroe County Board of Registrars on January 7, 1966, that opinion is withdrawn.

In fact, in another informal opinion rendered to Honorable Aubrey Carr, Member of the House of Representatives, on October 14, 1964, it was stated by the then Attorney General, through Mr. William N. McQueen of this office, that he knew of no law which would prohibit a member of a Board of Registrars from serving as a clerical assistant to the Board during the time the Board is not performing its official duties.

Further along this line, an informal opinion was rendered to Honorable M. D. Tingle, Probate Judge of Chilton County, on October 31, 1957, through Mr. Gordon Madison of this office, approving of a similar arrangement and citing **Garner v. McCall,** 235 Ala. 187, 178 So. 210, as apparent authority.

In the situation posed by your request for an opinion, the clerical work proposed to be done by members of the Board of Registrars and others would be done on days other than those required for the registration of voters or other duties required of the Board of Registrars.

Therefore, my answer to your question is that it would not be contrary to law for a member or members of the Board of Registrars to be employed by the County Governing Body for a set number of clerical days from time to time, setting out the work in writing to be done and the persons who may be used during each of the days approved by the County Governing Body for such clerical work, provided none of such days conflicts with the regular duties of the members of the Board of Registrars, as such.

Yours very truly,
MacDONALD GALLION
Attorney General

March 24, 1967

Honorable Pierre Pelham
City Attorney
City of Prichard
Prichard, Alabama 36610

Municipalities — Recorder's Court.

A municipality has no authority to place with a private collection agency unpaid fines resulting from convictions in recorder's court.

Opinion by Assistant Attorney General Gish.

Dear Mr. Pelham:

Your request for an official opinion, dated March 6, 1967, is as follows:

> "The City Council of the City of Prichard, Alabama, has authorized me to inquire of your office whether it would be lawful for the City of Prichard to enter into an agreement with a private collection agency for the collection of unpaid fines resulting from convictions in the Prichard Recorder's Court, under the terms of which agreement an assignment will be made to the private collection agency and that agency will be entitled to retain a certain percentage of the collections for its services."

A recorder has jurisdiction to impose penalties for violations of the ordinances of the municipality and also has the power of an ex officio justice of the peace in criminal matters. Title 37, Section 585, Code of Alabama 1940.

Title 37, Section 586, Code of Alabama 1940, prescribes the manner in which fines and costs fixed by the recorder's court for violations of ordinances may be collected. See **Williamson v. City of Greenville,** 39 Ala. App. 237, 97 So. 2d 600.

The methods by which fines and costs imposed for violations of State laws may be collected are controlled by the statutes codified in Title 15, Chapter 17, Article 5, Code of Alabama 1940.

No statute authorizes a municipality to enter into an agreement such as the one contemplated by your request.

Therefore, I am of the opinion that the City of Prichard may not place with a private collection agency unpaid fines imposed by its Recorder's Court.

Yours very truly,
MacDONALD GALLION
Attorney General

March 28, 1967

Miss Edna M. Reeves
Director
State Agency for Social Security
CAPITOL

Social Security — State Agency for Funds — Investment.

1. The State Agency for Social Security has the authority to invest monies in the contribution fund established by Title 55, Section 481, Code of Alabama 1940.

2. Additional legislation is necessary before any part of the contribution fund can be used in paying expenses of the agency.

Opinion by Assistant Attorney General McQueen.

Dear Miss Reeves:

Your request for an official opinion, bearing date of March 1, 1967, is as follows:

> "This Agency desires to invest money deposited in the Contribution Fund established under Section 481, Title 55, 1940 Code, as amended, and requests your official opinion as to whether or not this may be done without additional legislative action.
>
> "If your opinion is in the affirmative, this Agency will be able to be self supporting and, over a period of time, make a refund to the state, of the excess over the general operating administrative expenses of this Agency.
>
> "Since I have a board meeting pending receipt of this opinion, I will appreciate your usual prompt attention."

Your request presents two questions, viz., (1) may the State Agency for Social Security invest monies in the contribution fund so as to draw interest and thereby increase the fund, and (2) may the expense of the State Agency be paid from the contribution fund without additional legislation.

My answer to your first inquiry is in the affirmative.

Title 55, Section 481, Code of Alabama 1940, as amended, reads, in pertinent part, as follows:

> "§ 481. Contribution Fund.—(a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund:
>
> "(1) All contributions, interest, and penalties collected under sections 479 and 480; (2) all moneys appropriated thereto under

> this chapter; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) **interest earned upon any moneys in the fund, . . .**" (Emphasis added.)

Subsection (4) of Subdivision (1) of said section specifically provides that any interest earned upon monies in the fund shall become part of the fund. Certain it is that interest may not be earned on any monies unless such monies are invested in some manner. It is, therefore, my opinion that no additional legislation is necessary to enable the State Agency for Social Security to make legal investments of monies in the contribution fund.

Of course, it necessarily follows that any investments made from the fund should not be long term investments, and should be of such nature as to enable the State Agency to make payments of all amounts required to be paid to the Federal Agency pursuant to the agreement entered into by and between the State Agency and the Federal Agency under the provisions of Section 478 of Title 55, Code of Alabama 1940.

The answer to your second question is in the negative, that is to say, that before the expenses of the State Agency may be paid from the contribution fund, additional legislation is necessary.

Your attention is directed to Subsection (b) of Section 481, supra, which reads as follows:

> "(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund shall be made for, and solely for (A) payment of amounts required to be paid to the federal agency pursuant to an agreement entered into under section 478; (B) payment of refunds provided for in section 479(c) of this title; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality."

This section provides that withdrawals from the fund shall be made for, and solely for, payments required to be made to the Federal Government, payment of refund provided by Section 479 (c) of Title 55, and refund for overpayments made by any political subdivision or instrumentality.

I would suggest that Section 481 be amended so as to permit withdrawals from the contribution fund in such amounts as may be necessary to pay the costs of operation of the State Agency.

I would further suggest that this legislation also include a provision that any amount remaining in the contribution fund at the end of the fiscal year over and above the amount necessary for the

administration of the agency, including payment to the Federal Government for the next fiscal year, be covered into the general fund of the State.

Yours very truly,
MacDONALD GALLION
Attorney General

March 29, 1967

Honorable E. A. Grouby
Probate Judge
Autauga County
Prattville, Alabama

Honorable Morgan Reynolds
County Attorney
Chilton County
Clanton, Alabama

Counties — Municipalities — Hospitals — Ambulances — Civil Defense.

Procedure for counties, municipalities, hospitals, and Civil Defense Units to operate ambulance service discussed generally.

Opinion by Assistant Attorney General McQueen.

Gentlemen:

We have your request for an official opinion of this office in which several questions are raised.

The main question raised by each of you is by what method may the counties of the State and the municipalities of the State subsidize the operation of ambulance services in their localities.

The questions presented are:

(1) May the county and municipalities lawfully operate an ambulance service within the confines of the city or the county?

(2) Is it lawful for the Civil Defense Rescue Squad established by law to operate and provide a general ambulance service within the municipality or county, and if so, may the county or municipality contribute to the Civil Defense Squad for this purpose?

(3) May the several counties of the State and municipalities appropriate money to county hospitals or other hospitals and the hospital use said appropriation to aid in maintaining and providing ambulance service?

The following facts are applicable to Chilton County only:

On November 7, 1950, a special election was held in Chilton County for the purpose of determining whether or not the county governing body should be authorized to levy a special hospital tax, in addition to all other taxes, not to exceed four mills on each dollar of taxable property in the county to be used solely for acquiring, otherwise constructing, operating, equipping, or maintaining a county hospital. The voters of the county authorized the special tax at the election held for the purpose, and subsequent thereto the county governing body by proper ordinance or resolution levied a special tax of two mills on each dollar of taxable property in the county for the purposes enumerated.

Chilton County's question is:

(4) May the county governing body levy and collect an additional one mill tax for the purpose of purchasing, operating and maintaining an ambulance service to be used for the purpose of providing ambulance service to the people of the county?

My answer to your first question is in the negative.

Municipal corporations and counties have only those powers which are granted to them by the Legislature. **Town of Graysville v. Johnson,** 33 Ala. App. 479, 34 So. 2d 708; **City of Bessemer et al v. Huey,** 247 Ala. 12, 22 So. 2d 325, and **Johnson v. City of Sheffield et al.,** 236 Ala. 411, 183 So. 265.

I find no statutory authority or any statute from which it can be implied that counties or municipalities on their own responsibility have the authority to operate and maintain ambulance service.

My answer to your second question is in the negative.

Suffice it to say that the rescue squad established under the Civil Defense statutes was not established to take care of emergencies of the nature here considered.

My answer to your third question is in the affirmative.

County hospitals organized under the provisions of Chapter 6, Title 22, Code of Alabama 1940, and particularly Article 5 of said Chapter, have very broad powers among which are to acquire, construct, equip, enlarge, improve, maintain, and operate hospitals and to do all things necessary to that end.

If the Hospital Board determines that it is necessary to establish an ambulance service in connection with the operation of the hospital,

it has ample authority to do so. Title 22, Section 202(24), Code of Alabama 1940.

Hospitals other than county hospitals need no statutory authority to operate and maintain ambulance service, as they are not under the same restrictions as county hospitals, which are county agencies.

It, therefore, necessarily follows that a privately owned or otherwise owned hospital may operate and maintain ambulance service.

Title 22, Section 190, Code of Alabama 1940, reads as follows:

> "§ 190. Appropriation for sick and wounded authorized.—The governing body of any county or city in this state may make an appropriation or appropriations out of their respective treasuries to aid in maintaining and taking care of sick and wounded persons who are unable to provide for themselves in any hospital maintained for the care of the sick and wounded. Any county or city owned or controlled hospital may accept patients from any county or city."

In the event a county hospital through its Board of Directors and other governing bodies determines that it is necessary in the operation of the hospital to establish an ambulance service then in that event the county is legally authorized to appropriate its funds to aid in the operation of the expenses of the hospital. Quarterly Report of Attorney General, Vol. 51, page 162.

It is to be noted that Section 190, supra, includes municipal corporations within its purview as well as counties and what has been said hereinbefore in regard to counties appropriating their funds to hospitals is equally applicable to municipal corporations.

While the question has not been raised, I deem it advisable to add that in the event hospitals determine to operate and maintain an ambulance service, they may, in their discretion, charge and collect a fee therefor.

My answer to your question No. 4, as it applies to Chilton County, is in the affirmative.

It appears from the facts set forth from the Chilton County authorities, that the county has only levied two mills of the four mill tax authorized to be levied for hospital purposes. I am, therefore, of the opinion that the county governing body may at this time levy an additional one mill tax and turn the proceeds therefrom over to the Chilton County Hospital Board and the hospital may in turn use this source of income for the purpose of maintaining ambulance service.

Yours very truly,
MacDONALD GALLION
Attorney General

March 30, 1967

Honorable Nelson Allen
Probate Judge
P. O. Box 502
Jasper, Alabama 35501

Notaries Public — Executors — Guardians — Bonds.

Act No. 126, Acts of Alabama (Second Special Session) 1965, page 179, requiring official bonds of certain county officials and employees to be made with surety companies, not applicable to Notaries Public, Executors, or Guardians.

Opinion by Assistant Attorney General Tyson.

Dear Sir:

Your request for an official opinion dated February 14, 1967, presents the following:

> "I shall appreciate your advising me whether or not the provisions of Act No. 126, Second Special Session, Acts of the Legislature of Alabama 1965, page 179, (Title 41, Section 95(1), Code of Alabama, as Recompiled 1958 as amended 1965), have application to bonds of Notaries Public. Also, I would like to know whether or not this Act is applicable to bonds required of guardians and administrators of estates."

The answer to both of your inquiries is in the negative, as it is my opinion that Act No. 126, Second Special Session, Acts of Alabama Legislature 1965 has application only to those County Officials whose bond requirements are specified under Title 41, Sections 73-97, Code of Alabama, as Recompiled 1958.

For convenience, the bonds of the several officials mentioned in your request are governed by the provisions of the Alabama Statutes as follows:

1. Notaries Public, Title 40, Section 22, Code of Alabama, as Recompiled 1958. See also Volume 112, Quarterly Reports of the Attorney General, page 30.

2. Executors and Administrators of Estates, Title 61, Sections 96-112, Code of Alabama, as Recompiled 1958.

3. Guardians and Ward, Title 21, Sections 27-40, Code of Alabama, as Recompiled 1958.

I trust this answers your inquiry.

Yours very truly,
MacDONALD GALLION
Attorney General

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